United Nations CCPR/C/123/D/2247/2013

International Covenant on Civil and Political Rights

Distr.: General
13 August 2018

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2247/2013*, **

Communication submitted by:	Pavel Barkovsky (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	20 June 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 11 June 2013 (not issued in document form)
Date of adoption of Views:	13 July 2018
Subject matters:	Inhumane conditions of detention; access to justice; effective remedy
Procedural issues:	Exhaustion of domestic remedies; State party's failure to cooperate
Substantive issues:	Conditions of detention; effective remedy
Articles of the Covenant:	2 (3) (a), 7, 10 (1) and 14 (1)
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is Pavel Barkovsky, a national of Belarus born in 1978. He claims to be a victim of a violation by Belarus of his rights under articles 2 (3) (a), 7 and 14 (1) of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

Facts as submitted by the author

2.1 On 19 December 2010, the author participated in a demonstration against the presidential elections in Belarus, which he claimed were unfair. At 11 p.m. on the same day, he was detained by the police and brought to a detention centre together with approximately twenty other persons. Upon arrival to the detention centre, all detainees were lined up facing the wall, and continued standing in that manner until 7 a.m. the following day — for

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

about seven hours, the author estimates. The author submits that during that time he felt weak and suffered pain in his legs. He was then brought to a cell, where he was able to rest on a wooden bench with other detainees for three hours.

2.2 At 10 a.m. on 20 December 2010, the author was brought before a judge of the Sovetsky District Court of Minsk. The court sentenced the author to 15 days of administrative detention for participating in an unauthorized protest. He was then taken back to the detention centre, where he was held in a cell, measuring two square metres, with two other detainees. He claims that the cell was so small that he could not lie down and had to stand for seven hours. He claims that he felt sleep deprived and was not provided with either food or water until 5 a.m. on 21 December 2010 — a period of more than 30 hours. He was then moved to a temporary detention facility on Okrestina Street due to the shortage of space in the first detention centre.

2.3 On 22 December 2010, the author was moved back to the first detention centre, where he spent the remaining 13 days of his sentence. For the first six days, he was detained in a cell of about 20 square metres, with 8 to 10 other detainees. He was then moved to a cell of approximately 10 square metres, where he was held with five other persons. The author complains that the conditions of his detention were inhuman and degrading. He claims that the cells had no beds or chairs, and the single wooden bench had to be used by all detainees. He was forced to sleep fully clothed on bare wooden boards. The author was not provided with a mattress, a blanket or a pillow, although the temperature in the cell varied between 10°C and 14°C. As the temperature dropped to 10°C during the night, he was constantly cold and had difficulties sleeping. He suffered from backaches and, throughout the detention, from lack of food and sleep, and continuous headaches.

2.4 The cells were very small, therefore the author could not engage in any physical activity. He could not read as the cells were not equipped with sufficient light, or a desk or chairs. He was also deprived of daily walks and, owing to poor ventilation, was exposed to a strong tobacco smell from smokers in his cell, which had an adverse impact on his health. Furthermore, the toilet was not separated from the common area of the cell and he had to use the toilet in full view of other detainees; this was, in the author's opinion, degrading.

2.5 On 11 January 2011, the author filed a complaint to the Prosecutor's Office of the city of Minsk concerning the conditions of his detention. On 31 January 2011, the Prosecutor's Office responded that his claims regarding temperature, lighting, sanitary conditions, food and space in the detention cells "were not confirmed". In the same letter, the Prosecutor's Office stated that "the necessary measures were being taken" to provide detainees who had committed administrative offences with furniture and bedding in the cell, access to a telephone and access to inside yards for daily walks.

2.6 On 22 February 2011, the author submitted a complaint to the Office of the Prosecutor General against the decision of the Prosecutor's Office of the city of Minsk. The author complained that he had not been informed that officials from the latter office had indeed visited the places of his detention in order to verify his claims as he had not been granted access to the case materials. He also claimed that the Prosecutor's Office had ignored his claims of the inhuman treatment he had suffered even before the court hearing, such as the lengthy time he had spent standing and facing the wall, the sleep deprivation, the extensive stay in a small cell, and the period during which he had not been provided with sufficient food or water. On 25 February 2011, the Office of the Prosecutor General responded that his complaint had been sent back to the Prosecutor's Office of the city of Minsk for further investigation.

2.7 On 15 March 2011, the Prosecutor's Office of the city of Minsk confirmed that the author had not been provided with furniture or bedding, nor given access to the yard or a telephone. It stated that the "inconveniences" did not serve to violate his or other detainees' rights, but were the result of "objective reasons", such as an increase in the prison population. Also in March 2011, the author appealed the decision to the Office of the Prosecutor General, claiming that his earlier complaint had been sent back to the Prosecutor's Office of the city of Minsk, to the same official who had taken the first decision on his case, violating his right to independent review of the complaint. He also

complained that the Prosecutor's Office of the city of Minsk, in its decision of 15 March 2011, once again ignored the claims mentioned in his earlier appeal that referred to inhuman and degrading treatment. No response followed from the Office of the Prosecutor General; instead, he received another letter from the Prosecutor's Office of the city of Minsk, in which the Office ignored his claims.

2.8 On 19 January 2011, the author had also initiated civil proceedings before the Moskovsky District Court of Minsk, demanding moral compensation from the main department of internal affairs. On 3 March 2011, the court refused to initiate proceedings for lack of jurisdiction. In its decision, the court stated that the claims and complaints regarding conditions of detention should not be adjudicated by civil courts; rather, the author should have complained to the administration of the relevant detention facility. On 10 March 2011, the author appealed against this decision to the Minsk City Court, arguing that article 60, paragraph 1, of the Constitution of Belarus guarantees protection of one's rights and liberties by a competent, independent and impartial tribunal and that he was denied in such right. On 7 April 2011, the Minsk City Court upheld the decision of the Moskovsky District Court and rejected the author's appeal. Therefore, the decision of the Moskovsky District Court became final and came into force. Subsequently, in June 2011, the author submitted a complaint to the Chair of the Minsk City Court and, on 7 October 2011, to the Chair of the Supreme Court of Belarus under the supervisory review procedure. Both courts upheld the decisions of the lower courts.

The complaint

3.1 The author claims a violation of article 2 (3) (a) of the Covenant in view of the failure by Belarus to investigate his allegations under article 7 of the Covenant and to provide him with an effective remedy within the meaning of article 2 (3) (a).[1]

3.2 He claims that the inhuman conditions of his detention, in particular the overcrowded and cold cells, the denial of daily walks, the lack of separation of the toilet facilities and the deprivation of food and water, taken as a whole, amount to a violation of article 7 of the Covenant and of rules set out in paragraphs 9–12, 19, 20 (2) and 21 (1) of the Standard Minimum Rules for the Treatment of Prisoners.

3.3 The author further alleges that the refusal to have his case duly considered by a competent, impartial and independent tribunal amounted to a denial of access to a court and to a denial of his right to justice, in violation of article 14 (1) of the Covenant.

Lack of cooperation from the State party

4. In notes verbales dated 11 June 2012 and 6 March 2014, the Committee requested the State party to submit to it information and observations on admissibility and the merits of communication No. 2247/2013. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the substance of the author's claims. It recalls that article 4 (2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them and to make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they have been properly substantiated.[2]

Issues and proceedings before the Committee

Considerations of admissibility

5.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

[1] The author does not claim or argue violations under articles 19 and 21 of the Covenant.

[2] See, for example, *Samathanam v. Sri Lanka* (CCPR/C/118/D/2412/2014), para. 4.2, and *Diergaardt et al. v. Namibia* (CCPR/C/69/D/760/1997), para. 10.2.

5.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee takes note of the author's assertion that all available and effective domestic remedies have been exhausted. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

5.4 The Committee notes the author's submission that the State party violated its obligations under article 2 (3) (a) of the Covenant, since it failed to investigate the alleged violation of his rights under article 7 of the Covenant. The Committee therefore considers that the author's claim of violation under article 2 (3) (a) of the Covenant will be considered in conjunction with article 7.

5.5 The Committee considers that the communication is admissible as far as it raises issues under article 7, read alone and in conjunction with article 2 (3) (a), and article 14 (1) of the Covenant. The Committee considers that the author's claim about the conditions of his detention also appears to raise issues under article 10 (1) of the Covenant. Accordingly, it declares this part of the communication admissible and proceeds to its examination on the merits.

Considerations of the merits

6.1 The Committee has considered the communication in the light of all the information made available to it by the author, as required under article 5 (1) of the Optional Protocol.

6.2 The Committee notes the author's claim that upon arrival to the detention centre, he was forced to stand facing the wall for seven hours, and that he did not receive food and water during the first 30 hours following his arrest. The Committee also notes the author's claims that he spent 13 days in an overcrowded, small cell (see para. 2.3 above) without bedding, chairs, heating and proper ventilation, under extremely poor sanitary conditions. For the full duration of his detention, he was obliged to sleep on a wooden board with up to 10 other people and was not allowed to leave his cell for daily walks. The temperature inside varied between 10°C and 14°C, which resulted in him being cold and made it difficult to sleep. The author also claims that the toilet was not separated from the common area of the cell, and that he had to use the toilet in full view of other detainees. The author claims that overall, the conditions of his detention, including the deprivation of food, water and sleep as outlined above, had caused him physical and mental suffering and amounted to cruel, inhuman and degrading treatment.[3] The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty, and they must be treated humanely in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).[4] The Committee notes that the State party has not contested the information provided by the author on his conditions of detention, nor has it provided any additional information in this respect. In these circumstances, due weight must be given to the author's allegations. The Committee therefore considers that the conditions of detention that the author was subjected to amounted to a violation of his rights under article 7 of the Covenant.

6.3 The Committee also considers, as it has repeatedly found in respect of similar substantiated claims,[5] that the author's conditions of detention as described violated his right to be treated with humanity and with respect for the inherent dignity of the human

[3] The Committee notes that these allegations are consistent with previous findings of the Committee against Torture regarding poor conditions in places of deprivation of liberty in Belarus, including overcrowding, poor diet, lack of access to facilities for basic hygiene and inadequate medical care (see CAT/C/BLR/CO/4, para. 19), and that the Prosecutor's Office, in its response, partially acknowledged those shortcomings.

[4] See *Aminov v. Turkmenistan* (CCPR/C/117/D/2220/2012), para. 9.3.

[5] See *Kozulin v. Belarus* (CCPR/C/112/D/1773/2008), para. 9.5, and *Bobrov v. Belarus* (CCPR/C/122/D/2181/2012).

person, and were therefore contrary to article 10 (1), a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty. For these reasons, the Committee finds that the circumstances of the author's detention, as described by the author, constitute a violation of article 10 (1) of the Covenant.

6.4 The Committee notes the author's allegations that when he initiated civil proceedings before the Moskovsky District Court of Minsk against the illegal inaction of the administration of the detention facility, claiming that the conditions of his detention violated his rights under article 7 of the Covenant, the court refused to initiate proceedings for lack of jurisdiction, indicating that national legislation provides for an out-of-court (administrative) procedure for the consideration of complaints regarding conditions of detention, namely through a complaint to the head of the detention facility, where the author had served his administrative sentence.

6.5 The Committee reiterates the importance it attaches to States parties establishing appropriate judicial and administrative mechanisms for addressing alleged violations of rights under domestic law. It refers to paragraph 15 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it states that a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. In the present case, the Committee notes that the author filed several complaints to the Prosecutor's Office, which failed to take any action, and that the national courts refused to initiate proceedings for lack of jurisdiction. Therefore, the Committee concludes that the information before it indicates that the out-of-court (administrative) procedure was not an effective remedy. In the absence of any information from the State party, the Committee concludes that the author's rights under articles 7 and 10 (1), read in conjunction with article 2 (3) (a), of the Covenant have been violated.

6.6 In the light of that conclusion, the Committee decides not to examine separately the author's remaining claims under article 14 (1) of the Covenant.

7. The Committee, acting under article 5 (4), of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under articles 7 and 10 (1), read alone and in conjunction with article 2 (3) (a), of the Covenant.

8. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under an obligation, inter alia, to provide adequate compensation to the author, including reimbursement of any legal costs incurred, as well as appropriate measures of satisfaction. The State party is also under an obligation to take steps to prevent similar violations in the future, including by amending the current system of submitting complaints regarding conditions of detention to ensure that complainants have access to an effective remedy.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.